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Supreme Court of the United States

JANUARY TERM, 1967

No. 440

CLIVE MICHAEL BOUTILIER,

Petitioner,

—against—

THE IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

BRIEF OF AMERICAN CIVIL LIBERTIES UNION AND NEW YORK CIVIL LIBERTIES UNION, *AMICI CURIAE*

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Statement of Question Presented

1. Is the term "afflicted with psychopathic personality" so vague when construed to encompass consensual homosexual activity as to deprive petitioner of liberty without due process of law?

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BRIEF OF AMERICAN CIVIL LIBERTIES UNION AND NEW YORK CIVIL LIBERTIES UNION, *AMICI CURIAE*

Interest of *Amici*

The American Civil Liberties Union and its New York affiliate, the New York Civil Liberties Union, are organizations dedicated to the protection of individual rights guaranteed by our Constitution.

The case at bar presents novel and difficult questions concerning the constitutionally protected right of a person "to be informed as to what the state commands or forbids."[1]

This brief is submitted in the belief that this case provides an opportunity for the Court to clarify the intimate nexus which exists between the procedural safeguards guaranteed by the Fifth Amendment, such as the privilege against self-incrimination, and the government's obligation

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[1] *Lanzetta* v. *New Jersey*, 306 U. S. 451 (1939) at p. 453.

to define with reasonable clarity the nature of proscribed substantive conduct.

In addition, this brief is submitted in the belief that this Court should consider the vital question of the application of deportation statutes to conduct which does not endanger the public safety. Where conduct, like that in which petitioner was engaged, is private and consensual, without any act of aggression towards the community, no interest of the state is threatened.

The written consent of the parties to this *amicus* appearance has been obtained and filed with the Clerk of the Court.

Statute Involved

The statute involved is set forth as an Appendix to this Brief.

Introduction

Clive Michael Boutilier, an alien permanently residing in the United States for over ten years, has been ordered to leave this country because he was "afflicted with psychopathic personality" at the time of his entry on June 22, 1955, in that he had engaged in consensual homosexual activities between the ages of 14 and 32.

The Immigration and Naturalization Service predicates its deportation order upon the premise that evidence of homosexual activity is sufficient to establish the affliction "with psychopathic personality" which renders an alien excludable and hence subject to summary deportation at any time. *Immigration and Nationality Act of 1952*, 66 Stat. 163; Title 8, U. S. Code Section 212(a)(4) and Section 241(a)(1) [8 U. S. Code §1182 and §1251(a)(6)].

It is the government's contention that Congress intended the statutory term "psychopathic personality" to include within its purview all manifestations of homosexual activity. If the term "psychopathic personality" is construed in this manner, it is so vague as to give little or no guidance as to the scope of its proscription and, therefore, any punishment meted out to Boutilier thereunder deprives him of his liberty without affording him the constitutionally required warning that his conduct was proscribed. E.g., *Connolly, Commissioner* v. *General Construction Company*, 269 U. S. 385 (1926); *Lanzetta* v. *New Jersey*, 306 U. S. 451 (1939); *Bouie* v. *City of Columbia*, 378 U. S. 347 (1964).

The issue, therefore, is whether the statutory term "afflicted with psychopathic personality" is sufficiently definite to provide adequate guidance that all homosexual conduct falls within its purview.

ARGUMENT

I.

The term "psychopathic personality" is so vague when construed to cover consensual homosexual activity as to deprive petitioner of his right to due process of law under the Fifth Amendment.

1. The term "psychopathic personality" afforded no warning to Boutilier that consensual homosexual activity is a deportable offense.

The void for vagueness doctrine takes as one of its basic tenets that no man should suffer at the hands of the state as a result of conduct which he could not reasonably understand to be proscribed. See, Amsterdam, *The Vagueness Doctrine in the Supreme Court*, 109 U. of Pa. Law Rev. 67 (1960); *Bouie* v. *City of Columbia*, 378 U. S. 347

(1964). Thus, before punishment may be meted out under a statute, the statutory language must afford reasonable warning of the scope of its proscription. This Court held in *Jordan* v. *DeGeorge*, 341 U. S. 223 (1951), that, although the "void for vagueness" doctrine ordinarily arises in the context of criminal prosecutions, it is fully applicable to deportation statutes. The Court, however, in *DeGeorge* determined that the phrase there at issue, "crime involving moral turpitude", had acquired a sufficiently definite meaning through 60 years of judicial construction, until there was reasonable certainty that it would encompass the conduct then before the Court.

In contrast to the phrase at issue in *DeGeorge*, neither the courts nor the medical profession have construed the term "psychopathic personality" to include consensual homosexual conduct.

In *Minnesota ex rel. Pearson* v. *Probate Court of Ramsey County*, 205 Minn. 545, 287 N. W. 297 (1939), aff'd 309 U. S. 270 (1940), a Minnesota statute authorized the involuntary committal of persons proven to be of a "psychopathic personality". The Supreme Court of Minnesota, in upholding the constitutionality of the statute, construed the term as follows:

> "... the language of ... the act is intended to include those persons who, by an habitual course of misconduct in sexual matters, have evidenced an utter lack of power to control their sexual impulses and who, as a result, are likely to attack or otherwise inflict injury, loss, pain or other evil on the objects of their uncontrolled and uncontrollable desire. It would not be reasonable to apply the provisions of the statute to every

person guilty of sexual misconduct nor even to persons having strong sexual propensities. Such a definition would not only make the act impracticable of enforcement and, perhaps, unconstitutional in its application, but would also be an unwarranted departure from the accepted meaning of the words defined."

The United States Supreme Court held that it was bound by Minnesota's construction of the statute and, when limited to those persons whose uncontrollable sexual impulses created a danger of physical harm to others, the term "psychopathic personality" was not so vague as to be unconstitutional.

In holding that the statute could not be applied to "every person guilty of sexual misconduct", the Court in *Pearson* unequivocally suggested that "psychopathic personality" could not constitutionally be construed to encompass irregular and consensual homosexual activity, the type for which Boutilier now faces deportation. Cf. *Raley* v. *Ohio*, 360 U. S. 423 (1958).

In *Mutual Life Insurance Company of New York* v. *Frost*, 164 F. 2d 542 (1st Cir., 1947), the court was called upon to determine whether an insured qualified for insurance disability payments. The court quoted medical testimony to the effect that one manifestation of a "constitutional psychopathic personality" was an inability to cope with a hostile environment created by one's own blunders. The picture of Boutilier which emerges from his psychiatrists' reports is far from that of a person unable to cope with a hostile environment. Dr. Edward F. Falsey, a psychiatrist whom Boutilier consulted in 1964, reported:

"Evidently of good intelligence, this patient is working steadily as a building maintenance man for Kenilworth Company at 161 East 42nd Street. Earlier, he served at [sic] attendant and companion to a man who was mentally ill and the patient performed responsibly in the role of companion." Exhibit 6; Transcript of Record, p. 13.

Dr. Montague Ullman, Director of Psychiatric Services at Maimonides Hospital of Brooklyn, whom Boutilier consulted in 1965, stated:

"Mr. Boutilier has made a good work adjustment in this country. He has held his current job for three years as a maintenance worker with a copper concern. He is well liked, conscientious about his work and concerned with doing a very good job." Exhibit 7; Transcript of Record, p. 15.

Certainly, his conduct would not seem to a reasonable man to fall within the criteria of "psychopathic personality" enunciated in *Frost, supra.*

In *United States* v. *Gill,* 204 F. 2d 740 (7th Cir., 1953), a "psychopathic personality" was defined as:

". . . an unstable personality, with a tendency to episodic conflicts with the environment, which can occur in a violent manner, and which repeat themselves periodically all during a person's life."

Again, this definition could not have afforded any warning to Boutilier, whose conduct never exhibited the slightest tendency to violence, that his irregular and consensual homosexual activities might brand him as a "psychopathic

personality". See also, *O'Beirene* v. *Overholser*, 193 F. Supp. 652 (D. D. C., 1961).

No single construction of the term "psychopathic personality" emerges from these few judicial attempts at definition. What does emerge quite clearly, however, is the conclusion that Boutilier's conduct would not have been included under any of them. In contrast to *Jordan* v. *DeGeorge*, 341 U. S. 223 (1951), the reported judicial constructions of the phrase afforded no warning that Boutilier's conduct was conclusive evidence of a "psychopathic personality".

If we turn from a legal to a medical context, we again find that no coherent definition of "psychopathic personality" is apparent.[2] What is apparent, however, is a general consensus that irregular and consensual homosexual activity will not justify a diagnosis of "psychopathic per-

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[2] "Psychopathic personality . . . is considered by many to be a meaningless designation. . . ." Noyes, *Modern Clinical Psychiatry*, 3rd Ed. 1941, p. 410.

"The only conclusion that seems warrantable is that, at some time or other and by some reputable authority, the term psychopathic personality has been used to designate every conceivable type of abnormal character." Curran & Mallinson, *Psychopathic Personality*, 90 J. Mental Sci., 266 (1944), at p. 278.

"At present, the diagnosis of a psychopathic personality is practically meaningless." Guttmacher: *Diagnosis and Etiology of Psychopathic Personalities as Perceived in Our Time, in Current Problems in Psychiatric Diagnosis* (Hoch & Zubin Ed. 1953), 139, 154.

". . . consensus is impossible in the no-man's land of psychopathic personality." Tappan, *Sexual Offenses and Treatment of Sexual Offenders in the United States, in Sexual Offenses*, 500, 507 (Radzinowics Ed. 1957).

See also, Note, *Exclusion of Aliens as Psychopaths*, 68 Yale L. J. 935 (1959).

The United States Public Health Service, which now contends that "psychopathic personality" includes all forms of homosexual

sonality". *Fleuti* v. *Rosenberg*, 302 F. 2d 652, 677 (n. 14) (9th Cir., 1962), remanded on other grounds, 374 U. S. 449 (1963).

Notwithstanding the fact that neither the courts nor the medical profession had ever defined "psychopathic personality" in a manner which would encompass irregular and consensual homosexual activity, the government contends that the legislative history of the phrase makes it clear that Congress intended it as a "term of art", encompassing all forms of sexual deviation.[3] *Quiroz* v. *Neelly*, 291 F. 2d 906 (5th Cir., 1961); *United States* v. *Flores-Rodriguez*, 237 F. 2d 405 (2nd Cir., 1956).

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activity, itself considered the term vague and indefinite, stating in 1952:

> "Although the term psychopathic personality is vague and indefinite, no more appropriate expression can be suggested at this time." *Report of Public Health Service on the Medical Aspects of H.R. 2379*, in H.R. Rep. No. 1365, 82nd Cong. 2nd Sess. 46-47 (1952).

The General Counsel of the Immigration Service, in his report to Congress on the term "aliens afflicted with a psychopathic personality" (File No. 56190/113—Comments on S. 3455) (on file in Supreme Court Library) stated:

> "The drafters of the bill are attempting to clarify the meaning of the latter term in the 1917 Act [constitutional psychopathic inferiority] by the use of a more modern expression. The 1917 term has given rise to many difficulties in the past because it is vague and does not describe a condition which is easily susceptible of definition or diagnosis. The Service has some doubt that the new term 'psychopathic personality' used in this bill will prove any more readily susceptible of application than the term in the 1917 Act."

[3] If that is what Congress actually intended, it is unfortunate that a more descriptive phrase such as "sexual deviate" was not utilized. In fact, in 1965, Congress amended Section 212(a)(4) to include "sexual deviation" as a ground for exclusion. The ease with which the proscribed activity was capable of description makes it all the more regrettable that adequate draftsmanship was not utilized in 1952.

Of course, if the phrase "psychopathic personality" is unconstitutionally vague, reliance upon precise legislative history cannot cure the constitutional defect. *Fleuti* v. *Rosenberg*, 302 F. 2d 652 (9th Cir., 1962), remanded on other grounds, 374 U. S. 449 (1963); *United States* v. *Harriss*, 347 U. S. 612 (1954); *United States* v. *Spector*, 343 U. S. 169 (1952). For Congress to ascribe an unexpected meaning to a phrase which had never before borne such meaning is an exercise in legislative cryptography, connoting one set of meanings to the public at large, but another infinitely broader set of meanings, to the favored few having access to the statute's legislative history. Cf. *Raley* v. *Ohio*, 360 U. S. 423 (1958).

In *Bouie* v. *City of Columbia*, 378 U. S. 347 (1964), this Court condemned as void for vagueness an interpretation of South Carolina's trespass statute which gave to the words of that statute a meaning which a reasonable man could not have been expected to anticipate. The action of the Federal government in ascribing to the statutory phrase "psychopathic personality" a meaning so broad that a reasonable man could not by consulting judicial or medical definitions have been expected to anticipate it, must be equally repugnant to the Constitution.

The principle enunciated in *Lanzetta* v. *New Jersey*, 306 U. S. 451 (1939), that

> "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the state commands or forbids." [306 U. S. at 453]

has been reaffirmed by this Court in the recent cases of *Wright* v. *Georgia*, 373 U. S. 284 (1963); *Bouie* v. *City of*

Columbia, 378 U. S. 347 (1964); *Cramp* v. *Board of Public Instruction of Orange County*, 368 U. S. 278 (1961); and *Baggett* v. *Bullitt*, 377 U. S. 360 (1964). Today, more than ever, in a complex and often bewildering society, the state must be required to define with reasonable precision the burdens and responsibilities placed upon its subjects.

2. The term "psychopathic personality" affords no adequate standard to guide governmental officials in their application of the statute.

A second basic tenet of the void for vagueness doctrine is that no government official may be vested with overbroad discretion to determine whether or not given conduct falls within a penal statute. Such overbroad discretion would not only vest an official with the power to enact law, as opposed to merely administering it, but it also would render adequate judicial review of his conduct all but impossible. *Connolly, Commissioner* v. *General Construction Company*, 269 U. S. 385 (1926).

In *Beauharnais* v. *Illinois*, 343 U. S. 250 (1952), this Court recognized that a statute which created offenses so ill-defined that judges and juries in applying the statute could not draw from it adequate standards to guide them would violate the Constitution. See also, *Winters* v. *New York*, 333 U. S. 507 (1948).

The principle that adequate guidance must be afforded to government officials charged with a statute's enforcement is designed to protect against the arbitrary and unequal enforcement of penal statutes. If "psychopathic personality" may be construed to encompass consensual homosexuality, it may also be applied, by individual Immigration officials, to other forms of non-conforming conduct, such as

promiscuity or unemployment. The possibility that government officials may be empowered under this vague phrase to enact their individual code of morality into law is clearly sufficient to establish the unconstitutional vagueness of the phrase at issue.

II.

Boutilier has sustained a direct and particular injury as a result of the vagueness of the statutory term "psychopathic personality".

Although the Court below was troubled by the obvious vagueness problem inherent in the phrase "psychopathic personality", a majority reasoned that since much of the conduct which serves as the basis for Boutilier's deportation occurred prior to his entry into this country, the statute's vagueness could have in no way prejudiced him.

In *Cramp* v. *Board of Public Instruction of Orange County*, 368 U. S. 278 (1961), a teacher attacked the provisions of Florida's loyalty oath statute. He swore that he had never participated in any activity mentioned by the oath, but, nevertheless, objected to it on principle. This Court, reversing the Supreme Court of Florida, found that petitioner possessed standing to attack the vagueness of the statute, since he was "immediately in danger of sustaining some direct injury as the result of the statute's enforcement." 368 U. S. at pp. 282-283. Boutilier should likewise possess standing to assert his constitutional objection.

1. Boutilier sustained a direct injury as a result of the statute's vagueness, since post-entry conduct was relied upon in ordering his deportation.

To the extent that his post-entry conduct was relied upon by the government in ordering Boutilier deported, he suffered the classic injury against which the vagueness doctrine is designed to protect, in that conduct which Boutilier could not reasonably have known was proscribed by the Federal government, is being used by it as the basis for his deportation.

The Court below found that post-entry conduct was not a substantial factor in determining Boutilier's deportability. It distinguished *Fleuti v. Rosenberg*, 302 F. 2d 652 (9th Cir., 1962), remanded on other grounds 374 U. S. 449 (1963), on the ground that the examining officer in that case had relied heavily upon post-entry conduct. It seems incredible to suggest, however, that, if Boutilier had lived a life of impeccable conventional morality between 1955 and 1964, the post-entry years, the government would have initiated its deportation proceedings. It would be the purest fiction to suggest that pre-1955 behavior alone motivated the government in ordering Boutilier deported. The reality of the situation, as confirmed by the record below, is that his conduct after entering this country was a major factor in a finding that Boutilier was "afflicted with psychopathic personality".

In the Record of Sworn Statement, dated January 13, 1964 (Transcript of Record, pp. 1-10), Boutilier was interrogated extensively about his conduct in this country. In fact, this examination was divided roughly evenly between Boutilier's pre- and post-entry conduct. The Certification by the Public Health Service on January 20, 1964 that

Boutilier was a "psychopathic personality" was based solely upon this interrogation, and there is absolutely no indication that Boutilier's post-entry behavior was not weighed equally with his pre-entry behavior in determining whether he was "afflicted with psychopathic personality". (See Exhibit 4—Certification of U. S. P. H. S., Transcript of Record, p. 11.)

Finally, the Decision of Special Inquiry Officer, dated August 5, 1965, indicates that Boutilier's post-entry conduct was highly relevant in determining his deportability. The Special Inquiry Officer stated:

> "... if the United States Public Health Service doctors who issued the certificate of January 17, 1964 were to appear in the course of these proceedings for examination, they would testify that [Boutilier] prior to his arrival in 1955 *and subsequent thereto until date* has been a sexual deviate of the homosexual type. ..." (Italics added.)
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> • • • • •
>
> "... After his entry into the United States on June 22, 1955 he continued to have homosexual relations with other men with about the same frequency as before. For about seven years since his arrival in the United States he shared an apartment with another man of homosexual inclination with whom he also had homosexual relations." (Transcript of Record, pp. 23-24.)

Since (1) Boutilier's interrogation, (2) his certification as a psychopathic personality and (3) the decision of the Special Inquiry Officer as to his deportability all rested heavily upon activities performed after Boutilier's entry into this country, he is being deported as a result of con-

duct which the statute never warned him was forbidden. He, therefore, must possess standing to attack the statute's constitutionality.

2. Boutilier sustained a direct injury as a result of the statute's vagueness, since he was unable to conform his pre-entry conduct to any reasonably ascertainable standard.

Even if Boutilier's post-entry conduct were not a substantial factor in his deportation, he would possess standing to attack the vagueness of this statute because of the adverse effects of the statute's vagueness on his behavior in Canada prior to 1955. Judge Moore, dissenting below, stated:

> "Had [Boutilier] known that sexual deviation at the time of entry would be automatic grounds for exclusion, there is considerable reason to believe that he could have modified his behavior so that he could not be considered a deviate at the time of entry. He was young, intelligent, and responsible. While he had engaged in homosexual acts from the age of 16 to the age of 21, he had also had sexual relations with women three or four times during this period.
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> • • • • • •
>
> "In brief, [Boutilier] has been deported because of the existence at the time of his entry into this country of a psychological condition which he probably would have been able to correct had he had any reasonable warning that the existence of the condition could serve as a basis for exclusion or, still more drastic, for deportation after entry. He received no warning. I agree with the Ninth Circuit that to uphold a deporta-

tion order under these circumstances is repugnant to due process." [Citations omitted.] (Transcript of Record, pp. 32-33.)

In addition to depriving Boutilier of any opportunity to reform prior to his entry into this country, the statute's vagueness lulled him into believing that he was eligible for the benefits of residence and, eventually, citizenship in the United States. Relying upon this notion, Boutilier left his native land and emigrated to this country. Now, more than ten years later, the government informs Boutilier that his reliance was misplaced, and that, in fact, he was never eligible to reside here. At the very least he must possess standing to ask this Court whether the frustration of that reliance by the government deprives him of his constitutional guaranty of due process of law.

3. Boutilier sustained a direct injury as a result of the statute, since his constitutionally guaranteed procedural safeguards were vitiated by the statute's vagueness.

Finally, the vagueness inherent in the statutory phrase "psychopathic personality" not only failed to provide a sufficient yardstick against which Boutilier could measure his substantive conduct, but it also invidiously undercut the rudimentary procedural safeguards which are guaranteed to permanent resident aliens by the Constitution.

(a) *Privilege Against Self-Incrimination*

The information which eventually led to Boutilier's deportation order was voluntarily disclosed by him to the government in connection with his application for citizenship in September 1963, when Boutilier candidly informed

an examiner that he had been arrested on a morals charge (later reduced to simple assault and ultimately dismissed for non-prosecution) in 1959. The examiner relayed this information to his superiors and the investigation resulting in Boutilier's deportation order was launched. At the time Boutilier blurted out this damning information he had no reason to suspect that the exclusionary term "psychopathic personality" would encompass his irregular and consensual homosexual activity. The statute completely failed to warn Boutilier that the facts which he gratuitously revealed to the government might subsequently serve as the basis for governmental sanctions against him. The statute's vagueness, therefore, acted to vitiate Boutilier's constitutionally protected right to refrain from offering incriminating evidence about himself to the government, because the proscribed conduct was so vaguely defined that he could not know that the evidence which he was divulging could be incriminating.

A permanent resident alien possesses the right to invoke the protection of the Fifth Amendment in connection with a deportation proceeding. *Kwong Hai Chew* v. *Colding*, 344 U. S. 590 (1953); *DeLucia* v. *Flagg*, 297 F. 2d 58 (7th Cir., 1961); *Sherman* v. *Hamilton*, 295 F. 2d 516 (1st Cir., 1961), cert. den. 369 U. S. 820 (1962); *Bufalino* v. *Holland*, 277 F. 2d 270 (3rd Cir., 1960); see also, *Kimm* v. *Rosenberg*, 363 U. S. 405, 408 (1960) (dissenting opinion). It is a cruel hoax to assure a permanent resident alien that he need not reveal information which could lead to his deportation, and, at the same time, define the offense punishable by deportation so vaguely that he is unable to ascertain whether information revealed by him might be the basis for deportation. Yet that is precisely the situa-

tion in which Boutilier was placed. His right to claim the privilege against self-incrimination was vitiated because the statute under which he is being deported never even warned him that he was in danger of incrimination.

(b) *Due Notice of Charges*

In addition to vitiating Boutilier's Fifth Amendment right to claim the privilege against self-incrimination, the statute's vagueness deprived him of his constitutional right to receive clear notice of any charges against him which might be the basis for his deportation. In *Hirsch* v. *Immigration and Naturalization Service*, 308 F. 2d 562 (9th Cir., 1962) and *MacLeod* v. *Immigration and Naturalization Service*, 327 F. 2d 453 (9th Cir., 1964), the Courts reaffirmed the right of a permanent resident alien to be fully aware of any charges against him punishable by deportation, so that an adequate defense might be prepared. However, because the statute gave him no warning that his conduct was proscribed, Boutilier was never in a position to ascertain with any clarity the nature of any charges against him until after his interrogation on January 13, 1964. Yet it was precisely this interrogation which was the sole basis of his being branded a "psychopathic personality" by the United States Public Health Service on January 20, 1964. The statute's vagueness, therefore, deprived Boutilier of any opportunity to prepare and present an adequate defense, either legal or medical, at the very hearing which ultimately led to his deportation.

(c) *Right to Reasonable Certainty When Dealing With the Government*

Finally, the statute's vagueness deprived Boutilier of his right, basic to any society based upon free choice, to be reasonably aware of the consequences of any activity involving the state. At the heart of the void for vagueness doctrine is the realization that predictability in one's dealing with the state is one of our most fundamental rights. This element of predictability was wholly lacking in Boutilier's dealing with the government. What commenced in 1963 as a petition for citizenship, terminated in 1964 with an order for deportation. Boutilier was entitled to some statutory warning that his request for a more desirable immigration status could result in his deportation. No such statutory warning was ever afforded.

The emasculation of the procedural safeguards which Boutilier has suffered as a result of the statute's vagueness clearly establishes his standing to challenge its constitutionality.

4. Boutilier has standing to attack the vagueness of the statute as a member of the regulated class.

Since one of the basic purposes of the void for vagueness doctrine is the prevention of statutes so vague in their scope as to constitute a danger of arbitrary and unequal application, Boutilier, as a member of the class subject to the statute's regulation, has standing to question whether the standards contained therein afford adequate guidance to the government officials charged with the statute's enforcement. In addition, the very existence of a deportation statute so vague in its scope inhibits all nonconforming conduct on the part of permanent resident aliens lest their particular conduct trigger the statute's

sanction. *Cramp* v. *Board of Public Instruction of Orange County*, 368 U. S. 278 (1961). Therefore, Boutilier, as a member of the regulated class must have standing to demand that this inhibiting statute be clarified.

CONCLUSION

The judgment below should be reversed and the order of deportation dismissed.

Respectfully submitted,

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